



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 15 2009

Honorable Carol Olson
Executive Director
Department of Human Services
State Capitol
600 East Boulevard Avenue
Department 325
Bismarck, North Dakota 58508-0520

Dear Director Olsen:

This is to inform you that we have conditionally approved North Dakota's application for Federal Fiscal Year (FFY) 2009 funds under Part C of the Individuals with Disabilities Education Act (IDEA Part C). The effective date of the enclosed FFY 2009 IDEA Part C grant award is August 7, 2009.

Our conditional approval is based on our review of the application submitted by the North Dakota Department of Human Services (DHHS) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 30, 2009, and revised to confirm public participation completed as of August 7, 2009 (the revision was received by OSEP on September 9, 2009). The State's application included the State's policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, which is incorporated by reference to this letter as Enclosure A. In addition, the State provided the following specific assurances that it will:

1. Operate consistently with the Part C requirements in 20 U.S.C. 1431 through 1444 and applicable regulations in 34 CFR Part 303;
2. Ensure that the statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2009 grant period; and
3. Make such changes to, and submit, as necessary, for OSEP's approval, the State's policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of IDEA Part C, and applicable regulations, as soon as possible, and not later than the earlier of the date indicated by the State in Section II of its application or June 30, 2010. Section II of the State's application identifies the IDEA Part C requirements for which the State needs to amend any policies, procedures, methods and descriptions and the timelines by which the State will amend its policies, procedures, methods and descriptions to comply with Part C and applicable regulations. Within Section II, the State has included for each requirement that it cannot meet at this time, the date by which it expects to complete necessary changes associated with any policies, procedures, methods and descriptions that are not yet in compliance with the requirements of Part C and applicable regulations.

Please note that, as part of your State's application for FFY 2009, your State has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes

and regulations in effect with respect to the FFY 2009 grant period. Any changes made by the State to its FFY 2009 application or Part C policies or procedures that are application requirements, after OSEP approval, must meet the applicable public participation requirements under Part C in 34 CFR §§303.110 through 303.113 and, if they are requirements under Section II.A, must also be submitted to, and approved by, OSEP prior to the State's implementation of its new or revised application, policies and procedures.

Enclosed is the State's regular grant award for funds currently available under the Omnibus Appropriations Act, 2009 for the Part C program. These funds are for use primarily in 2009-2010 and are available for obligation by States from July 1, 2009 through September 30, 2011 in accordance with 34 CFR §76.709.

In addition to these regular FFY 2009 Part C funds, the American Recovery and Reinvestment Act of 2009 (ARRA) provided a one-time large increment in IDEA Part C funding. The ARRA IDEA Part C grants are a supplemental appropriation to the regular IDEA Part C appropriation. The first 50 percent of the ARRA IDEA Part C funds were awarded to States on April 1, 2009. North Dakota will receive the second 50 percent of its ARRA IDEA Part C funds at the same time as, but separately from, the enclosed regular FFY IDEA Part C award. Together, the State's regular FFY 2009 IDEA Part C funds and both awards of the State's ARRA IDEA Part C funds constitute each State's total FFY 2009 Part C allocation. Given the increased IDEA Part C FFY 2009 allocation to each State, States may wish to review carefully the guidance on the ARRA IDEA Part C grant awards, available at <http://www.ed.gov/fund/data/award/idea/arra/index.html>.

Section IV.B. of each State's FFY 2009 application for Part C funds requested updated information about each State's indirect costs that may be charged. DHS indicated in Section IV.B. that it had a cost allocation plan that expired on June 30, 2009, and that DHS is in the process of negotiating a new cost allocation plan that will be in effect for the period July 1, 2009 through June 30, 2010. In Section IV.B of the Application, DHS indicated it will continue to bill IDEA Part C FFY 2009 grant funds based on this previously approved cost allocation plan until a revised cost allocation plan is approved by DHS's cognizant Federal agency for FFY 2009, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2009 grant funds. Applying the proposed cost allocation plan to the increased FFY 2009 Part C funds due to the ARRA could result in an over-recovery of indirect costs for the FFYs 2008, 2009 and 2010 periods. We direct DHS to carefully review the responses to questions B-1 and B-2 in the guidance available at <http://www.ed.gov/fund/data/award/idea/arra/index.html> and direct questions regarding any adjustments to your cognizant agency or our Indirect Cost Unit. When a final cost allocation plan is approved by DHS's cognizant Federal agency for FFY 2009, please forward a copy of it to our Indirect Cost Unit and to your OSEP State contact.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant a State is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts

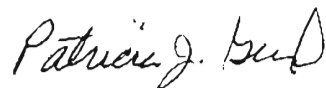
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are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant award for FFY 2009 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia J. Guard". The signature is fluid and cursive, with the first name "Patricia" being more prominent.

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

Enclosure A

cc: Part C Coordinator